

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:17CV255

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner’s request for counsel, discovery, and “scheduling packet.” ([Filing No. 13](#).) Specifically, Petitioner requests that the court issue him a “scheduling packet” and allow him to engage in discovery prior to entering a progression order.

“[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner’s ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984 (2000); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994). *See also* Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). The court has carefully reviewed the record and finds there is no need for the appointment of counsel at this time.¹

¹ Petitioner requests the court to appoint him counsel in his state court criminal cases. The court has no authority to appoint Petitioner counsel in those cases.

The next step in Petitioner's case is for the court to conduct an initial review of his habeas petition. The court will conduct the initial review in its normal course of business. Accordingly, a "scheduling packet" and discovery are premature at this time. Further, any discovery will also be premature prior to the court issuing a progression order that will condense and summarize Petitioner's claims and set forth the schedule for the parties' response deadlines.

IT IS THEREFORE ORDERED that: Petitioner's Motion to Appoint Counsel and for Discovery ([Filing No. 13](#)) is denied without prejudice to reassertion.

Dated this 18th day of October, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge